

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NORTH AMERICAN CAPACITY
INSURANCE COMPANY,

No. C 03-5521 WDB

Plaintiff,

ORDER RE PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

v.

TURNER CONSTRUCTION
COMPANY, et al.,

Defendants.

On April 5, 2006, the Court conducted a hearing in connection with plaintiff's Motion for Summary Judgment, filed January 9, 2006. Plaintiff withdrew its motion with respect to Turner Construction¹ but continues to pursue the motion as to James E. Roberts-Obayashi Corporation.

The insurance coverage issue that is the subject of this motion has been decided by the Alameda County Superior Court. See Exhibit 5 to Declaration of Martin L. Seeger, filed February 1, 2006. Judgment was entered by the Superior Court in Roberts-Obayashi v. Acceptance Insurance Companies, et al, Alameda Superior Court Case No. RG04150387, on March 28, 2006. See, attached.

It appears that the Superior Court has resolved this issue and that, therefore, there is no case or controversy pending in this Court. Plaintiff objects on the ground that the Superior Court's judgment is not yet final as the time for appeal has not

¹Accordingly, Turner's Request for Leave to File Opposition Nunc Pro Tunc is moot.

By Wednesday, June 14, 2006, plaintiff must file with the Court, deliver to chambers, and serve on opposing counsel a statement updating the Court about the status of the appeal relating to the March 28th judgment.

IT IS SO ORDERED.

/s/ Wayne D. Brazil
WAYNE D. BRAZIL
United States Magistrate Judge

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